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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,464	09/05/2003	Glen S. Axelrod	TFH047	8440

33047 7590 11/24/2010
GROSSMAN, TUCKER, PIERREAU & PFLEGER, PLLC
55 SOUTH COMMERCIAL STREET
MANCHESTER, NH 03101

EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1798

MAIL DATE	DELIVERY MODE
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11/24/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/656,464

Applicant(s)

AXELROD, GLEN S.

Examiner

Elizabeth M. Cole

Art Unit

1798

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15, 19, 20, 22, 28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-15, 19, 20, 22, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date 8/30/10
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/30/10 has been entered.
2. Claims 15, 12-14, 19-20, 22, 28-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 1, the specification as originally filed does not provide support for the limitation of a second outer fabric material disposed and engaged with at least a portion of first fabric material. The specification does not disclose "engaged with" and does not describe what this structure means. In claim 28, the specification as originally filed, does not provide support for said structure including ends wherein said ends are stitched together.
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15, 12-14, 19-20, 22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Denesuk et al, U.S. Patent NO. 6,196,156 in view of Jordan, U.S. Patent No. 5,226,384 and Bottger et al, U.S. Patent NO 6,610, 618, Howland, U.S. Patent Application Publication 2003/0091785 or Johnson, U.S. Patent No. 696,567. Denesuk et al discloses an article for use by pets comprising a core which may comprise foam or other types of fillers such as synthetic and natural fibers, (col. 10, lines 28-41) and a fabric cover. The fabric cover may comprise two different types of fabric and each type of fabric only partially covers the core. See col. 10, line 60 – col. 11, line 7 and col. 11, lines 38-46 as well as example 4. Suitable fabrics include polyolefins, acetate, acrylic, nylons and polyesters. See col. 11, line 65 – col. 12, line 4. The fabrics can be woven, non-woven or knitted. See col. 9, lines 31-43. Denesuk differs from the claimed invention because Denesuk does not teach that at least one of the fibers should be a high strength fiber. Jordan teaches that high strength fabrics such as woven aramid fabrics can be used as at least one layer in multi layered covers for articles used by pets. See abstract. Jordan teaches using the high strength aramid fabrics as the inner layers and using softer fabrics such as cotton or cotton blends as an outer covering layer. See col 5, lines 38-46. A cotton fabric would necessarily have fibers having tensile strength less than 50,000 psi and/or modulus less than 500,000 psi, since cotton fibers are not high strength fibers. Therefore, it would have been obvious to have employed high strength fibers for parts of the cover of Denesuk which would be most exposed to wear and tear, biting, chewing, etc., motivated by the expectation that this would enhance the durability of the bed. Jordan teaches

employing high strength fiber containing fabrics to reinforce items used by pets, but does not teach forming multiple layers having different orientation wherein the layers are oriented at angles to each other. Each of Bottger, Howland and Johnson '567 teach that it is known in the art to form woven fabrics having different degrees of strength in the MD versus the CD and to layer the fabrics so that the axis of each fabric is at an angle relative to the other fabrics in order to enhance the strength of the finished product. See for example, col. 1, lines 9-26 of Johnson '567; Col. 3, lines 1-8 of Bottger and the abstract as well as the entire document of Howland. Therefore, it would have been obvious to have oriented different layers of the fabric of Jordan so that the axis of each fabric was at an angle relative to the other layer as taught by any one of Bottger, Johnson '567, or Howland, in order to arrive a fabric having controllable and increased strength. With regard to wear the high strength layers are placed, it would have been obvious to have placed the high strength layers on those portions of the article which would be expected to be most likely to be exposed to chewing or other types of wear and tear by the pet during use.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Jordan, U.S. patent No. 5,226,384. . With regard to new claims 28 and 29, Jordan teaches forming the cover so that it is folded, so that it has a cylindrical shape and so

that it has stitching at the ends. The cover of Jordan comprises multiple layers. The cover of Jordan comprises high strength fibers such as aramid fibers disposed in a woven fabric. Therefore, Jordan anticipates claims 28 and 29. col. 3, lines 35-42, which teaches folded and overlapping the woven aramid fabric layers at the ends and stitching to join them as well as col. 3, lines 35-37 which teaches that the cover can have a tubular form, which is equated with the claimed cylindrical shape and, col. 4, lines 19-39, which teaches that the aramid fabric can be in the form of a woven fabric and col. 5, lines 38-46, which teaches an additional fabric layer may be provided.

7. Applicant's arguments have been fully considered but are not persuasive.

8. With regard to Jordan, Applicant argues that Jordan does not teach an animal toy. However, Jordan teaches that animals are known to chew on their pet beds. Further, the limitation that the instant invention is a pet toy is found in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

9. Further, the material of Jordan is capable of being played with as a toy in addition to be used as a bed by an animal. Further, Jordan clearly teaches that the pet bed can comprise other outer layers besides the aramid sheet, as set forth in column 5, such as a soft outer casing which makes the bed more comfortable for use by the pet.

10. The other arguments are moot in view of the new grounds of rejection necessitated by Applicant's amendments to the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

The examiner's supervisor Angela Ortiz may be reached at (571) 272-1206.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1798